

Decision _____

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

In the Matter of the Application of the CITY OF RICHMOND for an order preserving the wigwag warning devices at the Richmond Avenue Crossing in the City of Richmond, Contra Costa County, California.

Application 02-05-065
(Filed May 31, 2002)

OPINION APPROVING SETTLEMENT AND MODIFYING DECISION**1. Summary**

In Decision (D.) 03-09-023, we authorized The Burlington Northern Santa Fe Railway Company (BNSF) to continue work on changing the warning devices at the Richmond Avenue crossing (Crossing) in the City of Richmond (City). In accordance with the joint request of BNSF and the City, today we approve the parties' settlement agreement dated March 29, 2004 (Settlement), which specifies work to be done at the Crossing that differs from that authorized by D.03-09-023. We modify D.03-09-023 accordingly. The Settlement will allow upgrade of the warning devices and safety improvements to the approaches to the Crossing, and will keep in place but inoperative the wigwag warning devices (wigwags) at the Crossing. We also grant the City's request to withdraw its application for rehearing of D.03-09-023. This proceeding is closed.

2. The Settlement

BNSF and the City have agreed to the following plan for work at the Crossing:¹

- BNSF will install two Standard No. 9 flashing light and gate assemblies with predictor circuitry at the Crossing.
- BNSF will not install Standard No. 9 flashing light and gate assemblies on the center raised medians.
- BNSF will not use cantilever flashing light signals at the Crossing.
- The City will reduce the roadway approaching the Crossing to one lane in each direction (including a bike lane) 60 feet in advance of the Crossing.
- The City will eliminate the Cutting Boulevard approach to the Crossing.
- The City will construct a center-raised median from the Crossing to the southeast curb line of Railroad Avenue (Northwest quadrant).
- The City will construct a center-raised median from the Crossing to the roadway width transition point (Southeast quadrant).
- The City will construct median delineators from the end of the center-raised median to the Garrard Boulevard intersection (Southeast quadrant).
- The two existing wigwags will be left in place on the center-raised medians but will be inoperative.

Commission staff has indicated in writing its agreement with the construction plan proposed in the Settlement. The plan is reasonable in light of the whole record. The evidentiary hearing record shows that warning devices at the Crossing were in need of upgrading, and that additional steps to make the

¹ A copy of the Settlement is included as Appendix A.

Crossing safer—like those set out in the Settlement—were feasible and appropriate. The Settlement is consistent with the requirements of General Order (GO) 75-C in its use of Standard No. 9 warning devices. By allowing for the upgrade of the warning devices at the Crossing while preserving the wigwags in place and improving the safety of the approaches to the Crossing, the Settlement is in the public interest.²

3. Modification of D.03-09-023

The Settlement specifies the work the parties agree to undertake in order to implement safety improvements at the Crossing. This agreed-upon work differs in some respects from the work authorized by D.03-09-023. In light of our approval of the Settlement, the authorization contained in D.03-09-023 should be modified to reflect the plans agreed to in the Settlement.

4. Waiver of Comment Period

This is an uncontested matter in which the decision grants the relief requested. Accordingly, pursuant to Section 311(g)(2) of the Public Utilities Code, the otherwise applicable 30-day period for public review and comment is being waived.

5. Assignment of Proceeding

Michael R. Peevey is the Assigned Commissioner and Anne E. Simon is the assigned Administrative Law Judge in this proceeding.

² We do not have jurisdiction over, and therefore express no opinion on, that portion of the Settlement that grants an option to the City to purchase certain real property from BNSF, set forth in paragraph 8 and Exhibits B and C of the Settlement.

Findings of Fact

1. The Settlement is reasonable in light of the whole record.
2. The Settlement is in the public interest.

Conclusions of Law

1. The Settlement is reasonable in light of the whole record, consistent with law, and in the public interest.
2. The Settlement should be approved.
3. D.03-09-023 should be modified to reflect the plan for construction at the Crossing set forth in the Settlement.
4. The City's request to withdraw its application for rehearing should be granted.
5. In order to allow expeditious construction of the safety improvements at the Crossing, this decision should be effective immediately.

O R D E R

IT IS ORDERED that:

1. The Settlement Agreement dated March 29, 2004 (Settlement) between the City of Richmond (City) and The Burlington Northern Santa Fe Railway Company (BNSF) is approved.
2. The request of the City to withdraw its application for rehearing of Decision (D.) 03-09-023 is granted.
3. The text of the Order in D.03-09-023 is replaced by the following text:
 1. The Burlington Northern Santa Fe Railway Company (BNSF) is authorized to install two Standard No. 9 flashing light and gate assemblies with new predictor circuitry at the Richmond Avenue crossing in the City of Richmond, County of Contra Costa (Crossing).

2. All work at and in the vicinity of the Crossing shall be in accordance with the Settlement Agreement between BNSF and the City of Richmond, dated March 29, 2004, and this order.
 3. Clearances shall be in accordance with General Order (GO) 26-D.
 4. Walkways shall conform to GO 118. Walkways adjacent to any trackage subject to rail operations shall be maintained free of obstructions and shall be promptly restored to their original condition in the event of damage during construction.
 5. Prior to construction, BNSF shall file final construction plans with Consumer Protection and Safety Division's Rail Crossings Engineering Section (RCES).
 6. Within 30 days after completion of the work under this order, BNSF shall notify RCES in writing, by submitting a completed standard Commission Form G (Report of Changes at Highway Grade Crossings and Separations), that the authorized work is completed.
 7. This authorization shall expire if not exercised within two years unless the time is extended.
 8. This authorization shall expire if the above conditions are not complied with.
 9. This authorization may be revoked or modified if public convenience, necessity, or safety so requires.
4. Application 02-05-065 is closed.

This order is effective today.

Dated _____, at San Francisco, California.